



Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th JULY 2024

Appeal Ref: APP/Q9495/X/23/3324850

Gaynor Sports Ltd, Market Cross, Compston Road, Ambleside LA22 9BT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Gaynor Sports Ltd against the decision of the Lake District National Park Authority.
 - The application ref 7/2022/5243, dated 8 April 2022, was refused by notice dated 24 October 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the installation of two air conditioning units and associated pipework, ducting, cabling and supporting framework.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs have been made, which are the subject of a separate decision. Application A is made by Gaynor Sports Ltd against the Lake District National Park Authority. Application B is made by the Lake District National Park Authority against Gaynor Sports Ltd.

Preliminary Matters

3. I have taken the address from the Application Form, but I have included the postcode set out on the Appeal Form for completeness. It was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact and although the appellant did suggest that a site visit would be beneficial, due to the nature of the case, it was ultimately agreed that a site visit was not necessary.
4. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Matters such as planning policies and the effect of the development on the character and appearance of the area and neighbouring impacts are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
5. The LDC application included an Application Form and Cover Letter as well as architectural plans, a site location plan and existing plans, drawing ref 6053/3B (depicting 7 air conditioning units) and proposed plans drawing ref 6053/2A (depicting 2 air conditioning units). The details also include servicing schedules,

servicing logs, an air conditioning health and safety statement, photographs, google streetview images, Pricewise installation quotes and invoices as well as serial codes for the air conditioning units.

6. The appeal submissions included an Appeal Statement, a copy of an Enforcement Notice issued on 24 March 2021 and the Lake District National Park Authority's Draft Expediency Report for six air conditioning units. A copy of the response from the Lake District National Park Authority to a Freedom of Information request is also provided, along with the reports, records and communications included with the response. The LDC application claims that two of the seven air conditioning units shown on the plans are immune from enforcement action. The remaining five air conditioning units have been subject of an approved planning application, Council reference 7/2022/5049, to relocate the pipework, ducting and cable trays to a discrete location.

Main Issue

7. The main issue is whether the Lake District National Park Authority's (Park Authority) decision to refuse to grant the LDC for the two air conditioning units and associated pipework, ducting, cabling and supporting framework was well founded.

Reasons

8. An application under section 191(1)(b) of the Town and Country Planning Act (1990 Act) seeks to establish whether two of the seven air conditioning units on the southwest elevation would be lawful at the time of the application. The relevant date would therefore be the 8 April 2022 when the application was submitted.
9. Planning Practice Guidance (PPG) confirms the 'statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the 1990 Act.¹ Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: a) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and b) They do not constitute a contravention of any enforcement notice then in force.
10. The Enforcement Notice (Notice) and a subsequent section 174 appeal² are referred to in the submissions and are material to the determination of this appeal. The Notice issued on 24 March 2021, alleged building operations consisting of the addition of seven air conditioning units at the appeal site. The Notice required all seven air conditioning units subject of the Notice to be removed. In determining the appeal, the previous Inspector dismissed the grounds (d) and (a) appeals, upholding the Notice but allowing the ground (g) appeal. This means the Notice is upheld and remains in force, but the compliance period was extended from four to twelve months.
11. The LDC, and the evidence provided with it, seeks to address the reasons the previous Inspector dismissed the ground (d) appeal. The appellant has provided additional information to confirm that the two air conditioning units were installed by 2 October 2006, making them immune from enforcement action. I appreciate

¹ Paragraph: 003 Reference ID: 17c-003-20140306

² Appeal reference APP/Q9495/C/21/3275004

that the appellant is trying to address the reasons the previous ground (d) appeal against the Notice was dismissed. However, I can only have regard to the decision against the refused LDC, and I am not able to redetermine the previous Inspector's decision on the ground (d) appeal against the Notice.

12. Although I have not carried out a site visit as part of the appeal, in an LDC application such as this, the onus is firmly on the appellant to make out their case. The appellant has not suggested that the two air conditioning units have been removed, and based on the evidence before me, they remain in place. Even if the information submitted is sufficient to address the previous Inspector's concerns on the ground (d) appeal, the two air conditioning units would still have been in contravention of the Notice in force on the date the LDC application was submitted. As such, the air conditioning units, subject of the LDC, contravene the requirements of the Notice in force, and are contrary to section 191(2)(b) of the 1990 Act.
13. Accordingly, the appellant has failed to demonstrate that the two air conditioning units and associated pipework, ducting, cabling and supporting framework were lawful at the time of the LDC application.

Other matters

14. The appellant has questioned the validity of the Notice because the Park Authority has not produced a copy of the complaint following their Freedom of Information request. Also, following an earlier investigation into the breach, the Park Authority decided it was not expedient to take action in the public interest. Although I have had regard to these matters, as already indicated, I am unable to consider the validity of the Notice as part of the LDC appeal. Also, the Park Authority's decision to not act initially has already been raised and addressed as part of the previous appeal. These matters are not relevant to the determination of the LDC appeal.
15. I acknowledge the representation from the Lakes Parish Council, which states that the two air conditioning units do not result in any nuisance or visual harm and are necessary for the business. However, matters such as the effect of the development on the character and appearance of the area and neighbouring impacts are not relevant in an LDC appeal such as this. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Conclusion

16. For the reasons given above I conclude that the Park Authority's refusal to grant an LDC in respect of the installation of two air conditioning units and associated pipework, ducting, cabling and supporting framework was well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR